UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION TWENTY FIVE

SPURLINO MATERIALS, LLC, or in the alternative
SPURLINO MATERIALS OF INDIANAPOLIS, LLC,
or in the alternative, SPURLINO MATERIALS, LLC, AND
SPURLINO MATERIALS OF INDIANAPOLIS, LLC,
as a single integrated employer,

Respondent,

and Case No. 25-CA-31565

COAL, ICE, BUILDING MATERIAL, SUPPLY
DRIVERS, RIGGERS, HEAVY HAULERS
WAREHOUSEMEN AND HELPERS, LOCAL No. 716,
a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Charging Party.

RESPONDENT'S RESPONSE BRIEF IN OPPOSITION TO GENERAL COUNSEL'S LIMITED EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

Respondent, Spurlino Materials, LLC ("SM") or in the alternative Spurlino Materials of Indianapolis ("SMI"), or in the alternative, Spurlino Materials, LLC and Spurlino Materials of Indianapolis, LLC, by counsel and pursuant to Rule 102.24 of the Rules and Regulations of the National Labor Relations Board (the "Board"), respectfully submits this brief in response and opposition to General Counsel's Limited Exceptions to the Administrative Law Judge's Decision ("General Counsel's Limited Exceptions").

I.

INTRODUCTION

On December 3, 2010, after filing a Complaint that listed only SM as a Respondent, Counsel for Acting General Counsel ("General Counsel") filed a Motion to Strike, Motion in

Limine and Motion for Partial Judgment on the Pleadings (the "General Counsel's Motion"), requesting an order that: (1) portions of SM's answer be stricken which are based on a claim that SM is not the employer of the subject employees; (2) SM be prevented from presenting any evidence on this issue; and (3) SM be found, based on the pleadings, to be the employer of the subject employees. SM filed its response in opposition to General Counsel's motions on December 21, 2010. The Administrative Law Judge ("ALJ") thereafter issued his January 3, 2011 decision rejecting General Counsel's requests. The ALJ affirmed his decision in his March 15, 2011 Decision on the Merits.

On April 26, 2011, General Counsel filed General Counsel's Limited Exceptions to the ALJ's Decision. In the General Counsel's Limited Exceptions, General Counsel again argues that the ALJ erred in rejecting General Counsel's offensive collateral estoppel argument, this time asserting that even though the collateral estoppel elements are not met, Respondent should still be collaterally estopped from denying that SM is the employer of the bargaining unit members based on alternative dicta in *Harvey's Resort Hotel*. General Counsel's argument fails to address how this alternative dicta applies to the present case, when, unlike in *Harvey's Resort Hotel*, the answer to the complaint in a previous case brought by the Board, Case No. 25-CA-3005, *et al.* (the "2007 case) failed to put into issue whether SM is the employer of the subject employees, one of the ultimate issues in the present case. Accordingly, General Counsel's Limited Exceptions are without merit and the ALJ's Order should control.

II.

ARGUMENT

A.

Background

On August 13, 2010, Coal, Ice, Building Material, Supply Drivers, Riggers, Heavy Haulers, Warehousemen and Helpers, Local Union No. 716 ("Local 716") filed an unfair labor practice charge (the "Charge") in this case. The Charge identified "SMI" as the employer responsible for unfair labor practices allegedly committed in the case. A copy of the Charge is attached as *Exhibit A*, and it was entered into evidence in this case as General Counsel Exhibit 1-a. The Charge alleged that SMI failed to reinstate "bargaining unit members" when those bargaining unit members made an unconditional offer to return to work following a strike called by Local 716. Local 716 identified SMI as the employer because the January 23, 2006 Certification of Representative issued by Region 25 identifies "Spurlino Materials of Indianapolis, LLC" as the employer of the bargaining unit employees.[1] A copy of the Certification of Representative is attached as *Exhibit C*, and it was entered into evidence in this case as Joint Exhibit 1.

In the years that have followed the Certification, SMI has been involved in negotiations with Local 716 and has reached agreement on most issues, except wages and dispatch procedures. A copy of the cover page of the most recent proposal submitted by SMI to Local 716 is attached as *Exhibit D*, and it was entered into evidence in this case as Respondent's

[1] SMI is a limited liability company registered to do business in Indiana since November 3, 2005. A copy of the Indiana Secretary of State's business entity description is attached as *Exhibit B* and was entered into evidence in this case as Respondent's Exhibit 5.

Exhibit 13. The proposal specified SMI as the employer of the bargaining unit employees involved in this case.

On August 13, 2010, the Regional Director for Region 25 sent a letter to SMI, identifying SMI as the respondent to the Charge. A copy of the letter is attached as *Exhibit E.* On August 20, 2010, General Counsel again identified SMI as the proper respondent of the Charge, and General Counsel specifically identified SMI as the "Employer" in this case. A copy of the letter is attached as *Exhibit F.* Indeed, General Counsel in the November 5, 2010 Complaint and Notice of Hearing ("Complaint"), alleged that the Charge had merit, and specifically alleged that the employees were represented by Local 716. *See, Complaint,* ¶ 5, attached to General Counsel's Motion as *Exhibit A.*

B.

The ALJ Correctly Rejected General Counsel's Collateral Estoppel Argument

On January 3, 2011, the ALJ found that SM was not collaterally sopped from denying it was the employer of the subject employees because: (1) the matter was never put in issue in the prior proceeding; (2) SMI had already been found to be the employer in other proceedings (the 2006 representation proceeding in which Local 716 was certified by the Board and a 2008 Federal court proceeding brought by Local 716 to enforce a project labor agreement); (3) case law cited by General Counsel was distinguishable on its facts; and (4) even if the case law cited by General Counsel were not distinguishable, the ALJ's broad discretion to reject the use of collateral estoppel could not be repealed by such a decision. Given the four separate bases for finding that offensive collateral estoppel was inappropriate in this case, the ALJ's determination was entirely correct. In revisiting these four separate bases for the ALJ's determination on General Counsel's Limited Exceptions, the ALJ's determination must surely control.

Despite Region 25's Certification of Representative, Local 716's own acknowledgment in the Charge, and both the Regional Director and General Counsel identifying SMI as the "Employer," General Counsel changed the name of the Employer in the Complaint and refused to recognize that SMI, not SM, is the properly named employer in this case. With the filing of General Counsel's Limited Exceptions, General Counsel again argues that the ALJ's denial of General Counsel's Motion was incorrect based on certain 2007 admissions by SM in the 2007 Case, that somehow collaterally estop SM from challenging the proper name of the bargaining unit members' employer at this point. *General Counsel's Limited Exceptions*, pp 3-6.

There simply has been no allegation in the Charge, nor was there ever an issue in the investigation of the Charge, calling into question the proper identification of SMI as the Employer in the present case. General Counsel should therefore be precluded from using the controversial doctrine of offensive collateral estoppel in General Counsel's Motion. *See Tofany v. NBS Imaging Systems, Inc.*, 616 N.E.2d 1034, 1038 (Ind. 1993).

Even if collateral estoppel could be considered, General Counsel has not shown that it is appropriate in this case. At most, General Counsel has shown that the complaint in the 2007 Case alleged an employment relationship and SM admitted the allegation in its responsive pleading. Under well-settled Board law, however, "if the answer to a complaint fails to put the matter in issue, then collateral estoppel is inapplicable." *Harvey's Resort Hotel*, 271 NLRB 306 (1984). Because the answer in the 2007 Case admitted the complaint allegation, the answer failed to place employer status in issue, and collateral estoppel therefore cannot apply in the present case.

C.

Harvey's Resort Hotel

Despite the ALJ's well-reasoned opinion that collateral estoppel does not apply, General Counsel argues collateral estoppel still applies by merely citing alternative dicta from *Harvey's Resort Hotel*, which states that "even if all the requirements for collateral estoppel were not met in this case, we would nonetheless find that the Respondent's reliance on the earlier case is justified in view of the striking similarities between the two cases." *General Counsel's Limited Exceptions*, p. 6. However, this quoted language from *Harvey's Resort Hotel* does not apply to the present case because, as General Counsel fails to mention, the prior case in *Harvey's Resort Hotel* necessarily considered the underlying issue of whether the individuals were supervisors for purposes of resolving the ultimate issue in that case. In the present case, the employer status of the employees as between SM and SMI was never even discussed or necessarily determined because the answer to the complaint did not put this matter at issue. Therefore, this language has absolutely no effect upon the ALJ's decision. To find otherwise would effectively require the Board to use *Harvey's Resort Hotel* dicta as the new rubric for applying the doctrine of collateral estoppel. Such a result is against the wealth of well-settled Board authority addressing collateral estoppel, and as a result, the General Counsel's argument based on *Harvey's Resort Hotel* is without merit.

Moreover, the language from *Harvey's Resort Hotel* cited by General Counsel does not overcome the judge's "broad discretion" to reject using collateral estoppel in the instant case. *See* ALJ's January 3, 2011 Order, p. 4. The ALJ, in his broad discretion, appropriately considered the Certification of Representative identifying SMI as the relevant employer and the federal court's 2008 decision in doing the same.

Furthermore, the central issue of the present case turns on whether the bargaining unit members engaged in a partial strike and, if not, whether they engaged in an economic strike. Specifically, Local 716 addressed an August 3, 2010 letter to SMI, notifying it that the bargaining unit members were going on strike. A copy of Local 716's strike notice letter is attached as *Exhibit G*, and it was entered into evidence in this case as Joint Exhibit 5. Local 716, however, recognized that bargaining unit members were prohibited from striking on the Project Labor Agreement for the Stadium and Convention Center Expansion Project (the "PLA"), and it therefore assured SMI that the bargaining unit members would continue working on that project alone.[2]

The PLA was executed by Local 716 and SMI. A copy of the federal court Order enforcing the PLA against SMI is attached as *Exhibit I.* Importantly, Judge Hamilton in the attached 2008 case filed by Local 716 against SMI found that SMI operated the facilities in question in the present case, that Local 716 became the employees' certified bargaining representative, and that the parties (including SMI) entered into the PLA. *Exhibit I*, pp. 3-4.

If General Counsel wishes to deny that SMI is the proper employer, General Counsel cannot show privity of contract in the PLA, and it cannot provide any justification for the bargaining unit members' partial strike. *See Airo Die Casting, Inc.*, 354 NLRB No. 8, 2009 WL 1311471 at *36 n.42 (April 29, 2009) (recognizing that a "selective refusal to perform some, but not all . . . lawfully assigned tasks . . . constitutes a partial strike, an activity that is not protected" by the National Labor Relations Act). Thus, it is illogical for General Counsel to allege someone other than SMI is the employer of the bargaining unit members.

[2] When Local 716 made an unconditional offer for the bargaining unit members to return to work, it again addressed the letter to Spurlino Materials of Indianapolis. A copy of the letter is attached as *Exhibit H*, and it was entered into evidence in this case as Joint Exhibit 6.

III.

CONCLUSION

Local 716 recognizes that the bargaining unit members are employed by SMI, the Certification of Representative identifies SMI as the employer, and the PLA identifies SMI as the proper employer. The only remaining question is whether the mistaken designation of SM as the employer of the bargaining unit drivers in the 2007 Case should be corrected to accurately reflect the proper name of the employer. There simply is no justification for General Counsel's unsolicited attempt to go outside the allegations and substitute a party that General Counsel, herself, did not identify when she investigated the Charge. The ALJ correctly rejected General Counsel's argument, and his broad discretion to do so should not be overturned. SMI therefore respectfully requests an order denying General Counsel's Limited Exceptions.

Respectfully submitted,

/s/ A. Jack Finklea
A. Jack Finklea

Attorneys for Respondents,
Spurlino Materials, LLC and
Spurlino Materials of Indianapolis

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically on May 10, 2011 and served the same day, by U.S. mail, postage prepaid, upon the following:

Ms. Kim Sorg-Graves
National Labor Relations Board
575 N. Pennsylvania, Room 238
Indianapolis, IN 46204

Mr. Neil Gath
Mr. Geoffrey S. Lohman
Fillenworth, Dennerline, Groth & Towe
429 E. Vermont Street, Suite 200
Indianapolis, IN 46202

/s/ A. Jack Finklea
A. Jack Finklea

James H. Hanson
jhanson@scopelitis.com
A. Jack Finklea
jfinklea@scopelitis.com
Scopelitis, Garvin, Light, Hanson & Feary, P.C.
10 West Market Street, Suite 1500
Indianapolis, IN 46204
Phone (317) 637-1777
Fax (317) 687-2414
H:\Users\sfromholz\wpdocs\ATTYS\LME\Spurlino Materials\Case No. 25-CA-31565\Response Brief to GC's Limited Exceptions.doc

Exhibit A

Exhibit A

FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
25-CA-031565	8/13/10

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Spurlino Materials of Indianapolis

b. Tel. No. (317) 248-2525

c. Cell No.

f. Fax No.

g. e-Mail

d. Address *(Street, city, state, and ZIP code)*
2605 Kentucky Avenue
Indianapolis, IN 46221-5005

e. Employer Representative
Jeff Davidson

h. Number of workers employed
Approx. 20

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Trucking

j. Identify principal product or service
Ready mix concrete

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* (3) and (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
Since on or about August 12, 2010, the Employer has refused to reinstate bargaining unit members who have made an unconditional offer to return to work following the conclusion of an unfair labor practice strike.

The Charging Party requests that the Regional Director seek an injunction pursuant to Section 10(j) of the Act.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
Coal, Ice, Building, Material, Supply Drivers, Riggers, Heavy Haulers, Warehousemen and Helpers, Local Union No. 716

4a. Address *(Street and number, city, state, and ZIP code)*
849 S. Meridian Street
Indianapolis, IN 46225

4b. Tel. No. 317-632-9468

4c. Cell No.

4d. Fax No.

4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filed in when charge is filed by a labor organization)*
International Brotherhood of Teamsters

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By _____ Geoffrey S. Lohman, Attorney
(signature of representative or person making charge) *(Print/type name and title or office, if any)*

Address 429 E. Vermont Street, Suite 200, Indianapolis, IN 46202 08/12/2010 *(date)*

Tel. No. 317-353-9363

Office, if any, Cell No.

Fax No. 317-351-7232

e-Mail

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Exhibit B

Name Searched On:
SPURLINO MATERIALS OF INDIANAPOLIS (Legal)

Current Information

Entity Legal Name:
SPURLINO MATERIALS OF INDIANAPOLIS, LLC

Entity Fictitious Name:
Entity Address:
4000 OXFORD ST RD, MIDDLETOWN, OH 45044

General Entity Information:

Control Number: **2005110400170**
Status: **Active**
Entity Type: **Foreign Limited Liability Company (LLC)**

Entity Creation Date: **11/3/2005**
Entity Date to Expire:
Entity Inactive Date:

Original Creation Date: **10/17/2005**
Original Creation State: **OH**

This entity is current with Business Entity Report(s).

There are no other names on file for this Entity.

Registered Agent(name, address, city , state , zip):
JAMES K SPURLINO
32 E WASHINGTON ST STE 900
INDIANAPOLIS , IN 46204

Principals(name, address, city, state, zip - when provided)
This Limited Liability Company Has Managers.

Transactions:

Date Filed	Effective Date	Type
11/03/2005	11/03/2005	Application for Certificate of Authority

Corporate Reports:
Years Paid
2007 2009

Years Due
None

Additional Services Available:

GO	Generate an official Certificate of Existence/Authorization. There is a fee of $18.00 for *IN.gov* subscribers and a fee of $19.38 for credit card users. Example Certificate

NEW SEARCH

All the entity information captured by the Indiana Secretary of State, pursuant to law, is displayed on the Internet. For further information, please call our office at 317-232-6576. Copies of actual corporate documents can also be downloaded online.

If you encounter technical difficulties while using these services, please contact the *IN.gov* Webmaster.
If you are unable to find the information you need through the resources provided on this web site, please contact Secretary of State Todd Rokita's Business Services Division at 317-232-6576.

« Back to the SOS Web site

Exhibit C

FORM NLRB-4279
(2-88)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

RC - RM - RD

Exhibit C

SPURLINO MATERIALS OF INDIANAPOLIS LLC

Employer

and

COAL, ICE, BUILDING MATERIAL, SUPPLY DRIVERS, RIGGERS, HEAVY HAULERS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 716

Petitioner

TYPE OF ELECTION *(CHECK ONE)*

- ☐ CONSENT
- ☒ STIPULATED
- ☐ RD DIRECTED
- ☐ BOARD DIRECTED

(ALSO CHECK BOX BELOW WHEN APPROPRIATE)

- ☐ 8(b)(7)

CASE 25-RC-10313

CERTIFICATION OF REPRESENTATIVE

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has been selected. No timely objections have been filed.

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots have been cast for

COAL, ICE, BUILDING MATERIAL, SUPPLY DRIVERS,
RIGGERS, HEAVY HAULERS, WAREHOUSEMEN
AND HELPERS LOCAL UNION NO. 716

and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit.

UNIT:

All full-time and regular part-time drivers and plant operators/batch men employed by the Employer at the following facilities: Indianapolis (Kentucky Ave.), Indiana; Linden, Indiana; and Noblesville, Indiana;

BUT EXCLUDING all garage employees, mechanics, helpers, laborers, dispatchers, and guards and supervisors, as defined in the Act.

Signed at INDIANAPOLIS, INDIANA

On the 23rd day of JANUARY 2006

Rik Lineback

Regional Director, Region Twenty-five
National Labor Relations Board

Exhibit D

Exhibit D

AGREEMENT

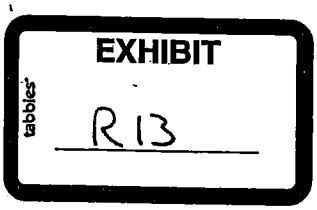
between

SPURLINO MATERIALS OF INDIANAPOLIS, LLC

and

COAL, ICE, BUILDING MATERIAL, SUPPLY DRIVERS, RIGGERS, HEAVY HAULERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 716, a/w THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS

For the Period of March 30, 2009 to April 30, 2011



March 25, 2009

Exhibit E

Exhibit E

United States Government
NATIONAL LABOR RELATIONS BOARD
Region 25
575 North Pennsylvania Street - Room 238
Indianapolis, IN 46204-1577

FAX (317) 226-5103
Phone (317) 226-7381

August 13, 2010

Spurlino Materials of Indianapolis, LLC
2605 Kentucky Avenue
Indianapolis, IN 46221

Re: Spurlino Material of Indianapolis
Case: 25-CA-31565

Ladies and Gentlemen:

This is to inform you that a charge, a copy of which is enclosed, was filed in the above case.

FILING DOCUMENTS WITH REGIONAL OFFICES: The Agency is moving toward a fully electronic records system. To facilitate this important initiative, the Agency strongly urges all parties to submit documents and other materials (except unfair labor practice charges and representation petitions) to Regional Offices through the Agency's E-Filing system on its website: http://www.nlrb.gov(See Attachment to this letter for instructions). Of course, the Agency will continue to accept timely filed paper documents.

This case has been assigned to the Board Agent shown below. When the Board Agent solicits relevant evidence from you or your counsel, I request and strongly urge you or your counsel to promptly present to the Board Agent any and all evidence relevant to the investigation. It is my view that a refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily. Full and complete cooperation includes, where relevant, timely providing all material witnesses under your control to a Board Agent so that witnesses' statements can be reduced to affidavit form, and providing all relevant documentary evidence requested by the Board Agent. The submission of a position letter or memorandum or the submission of affidavits not taken by a Board Agent does not constitute full and complete cooperation.

I would appreciate promptly receiving from you a full and complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge. Attached is a statement (Form NLRB 4541) briefly setting forth procedures followed in the processing of unfair labor practice charges, which I trust will be helpful to you.[1]

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[1] Customer service standards concerning the processing of unfair labor practice cases have been published by the Agency and are available on the Agency's Internet site at www.nlrb.gov under "Public Notices".

Commerce Questionnaire

Enclosed is a form requesting commerce data which should be completed, signed by you and returned, addressed to the attention of the investigating Board Agent, within 10 days of the date of this letter. **Failure to timely provide such information may, without further notice, result in the issuance of investigatory subpoenas to obtain commerce data.** Your cooperation in this matter is appreciated.

Solicitations from Organizations

Under the Freedom of Information Act, unfair labor practice charges and representation petitions are subject to prompt disclosure to members of the public upon request. In this regard, you may have received a solicitation by organizations or persons who have obtained public information concerning this case and who seek to represent you before our agency. You may be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board; their information regarding this case is only that which must be made available to any member of the public.

Position Statement

The Agency cannot accept any limitations on the use of any evidence or position statements that are provided to it. Thus, statements of fact and positions provided by you or your counsel may be introduced as evidence by Counsel for the General Counsel at a hearing before an administrative law judge. Further, the Agency may be required by the Freedom of Information Act to disclose such documents to the public upon request, absent some applicable exemption such as that which protects confidential financial information or personal privacy interests.

NOTICE

The National Labor Relations Board will provide assistance to parties with limited English proficiency. If parties are in need of assistance due to their limited English proficiency, they should advise this Office as promptly as possible.[2]

Very truly yours,

Richard J. Simon
Acting Regional Director

RJS/mah

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[2] The National Labor Relations Board will provide assistance to individuals with limited English. If you or anyone involved in this case is in need of assistance due to their limited English, please advise this Office as soon as possible.

La Junta Nacional de Relaciones de Trabajo proveerá asistencia a personas con ingles limitado. Si usted necesita asistencia debido a su ingles limitado, debe avisar a esta Oficina tan pronto posible.

Enclosures:
Questionnaire on Commerce Information
NLRB Form-4541
NLRB Form-4701
Copy of Charge
Communications by E-mail

Case assigned to Board Agent: Kimberly R. Sorg-Graves, (317)226-7546, Kim.Sorg-Graves@nlrb.gov

Exhibit F

Exhibit F

United States Government
NATIONAL LABOR RELATIONS BOARD
Region 25
575 North Pennsylvania Street - Room 238
Indianapolis, IN 46204-1577

(317) 226-7381

AUG 2 4 2010

August 20, 2010

VIA FACSIMILE
James H. Hanson, Attorney
Scopelitis, Garvin, Light, Hanson & Feary, P.C.
10 W. Market Street, Suite 1500
Indianapolis, IN 46204-2968
[Ph: 317-637-1777]
[Fax: 317-687-2414]

RE: Spurlino Materials of Indianapolis
25-CA-31565

Dear Mr. Hanson:

The above captioned charge alleges violations of Section 8(a)(3) and (5) of the Act. If these allegations are found to have merit, injunctive relief under Section 10(j) of the Act may be warranted. This letter is to solicit the Spurlino Materials of Indianapolis,' ("Employer") written position on whether 10(j) relief would be appropriate in this case if merit is found. Your written position should include any legal authority with respect to why the Region should not seek injunctive relief. Given the priority nature of this matter, your written position must be received in this office no later than 5:00 P.M. on August 27, 2010. You may submit your position by facscimile mail at (317) 226-5103 or electronically at www.nlrb.gov.

It is this office's practice to ask that Charged Parties fully cooperate in our investigations. For Purposes of the Equal Access to Justice Act, I am obliged to inform you that the agency considers "full and complete cooperation" to include, where relevant, timely providing all material witnesses under your control to a Board agent so that witnesses' statements can be reduced to affidavit form, and providing all relevant documentary evidenced requested by a Board agent. The submission of a position letter or memorandum or the submission of affidavits not taken by a Board agent does not constitute full and complete cooperation.

If you wish to make Employer witnesses available to give affidavits, please contact me to schedule an appointment on or before August 27, 2010, for the witnesses to give affidavits. If you do not wish to make Employer witnesses available for affidavits,

please state so in writing. In addition to requesting to take these affidavits, it is requested that you submit answers to the following:

1. a copy of the Union's letter to the Employer informing it that the employees were going on strike;
2. a copy of the Union's letter to the Employer informing it that the employees were making an unconditional offer to return to work;
3. a copy of the Employer's letter to the Union in response to its offer for employees to return to work;
4. a statement as to why the Employer contends that it was privileged to permanently replace the striking employees along with case law to support its position;
5. a statement along with caselaw that supports the Employer's position that there is a time limit on which employees can engage in an unfair labor practice strike in response to an unremedied unfair labor practice finding by the Board, specifically a finding of failing to reinstate a known union activist in a small unit of employees;
6. a list of all employees that were employed by the Employer on August 2, 2010;
7. a list of all employees that have been employed by the Employer at any time since August 3, 2010, to the present;
8. a copy of all of the applications of employees who have worked at the Employer's facility at any time since August 3, 2010;
9. a copy of the record indicating the hire date of all employees hired at any time after August 2, 2010;
10. and any other relevant evidence.

The above deadline for the submission of evidence will not be extended absent compelling circumstances. Your cooperation is very much appreciated. Should you have any questions, I may be contacted at 317-226-7546.

Sincerely,

Kim Sorg-Graves

Kim Sorg-Graves
Board Agent

H:\R25Com\25 C Cases\25-CA-031565 Spurlino Materials of Indianapolis\Regional Determination\LTR.25-CA-031565.requesting evid and 10(j) response.doc

Exhibit G

Exhibit G

August 3, 2010

VIA HAND DELIVERY
Jeff Davidson
Spurlino Materials of Indianapolis
2605 Kentucky Avenue
Indianapolis, IN 46221

In re: Teamsters Local 716 and Spurlino Materials

Dear Mr. Davidson:

The purpose of this letter is to inform you, effective 12:00 a.m. on Tuesday, August 3, 2010, the bargaining unit represented by Teamsters 716 at Spurlino Materials of Indianapolis will be engaged in an unfair labor practice strike. These bargaining unit employees will be on strike until Spurlino Materials remedies the unfair labor practice it committed in discharging Gary Stevenson. The remedy should include an offer of reinstatement to Stevenson, as well as making him whole for lost wages and benefits to date.

This unfair labor practice strike will cover all work performed by the bargaining unit which is not subject to a labor agreement with a binding no strike clause. Teamsters Local 716 will continue to honor Article 12 of the Project Labor Agreement for the Stadium and Convention Center Expansion Project. Members of the Teamsters Local 716 bargaining unit assigned to the Convention Center will fully perform all work covered by the PLA in accordance with that no strike provision in the PLA.

Local 716 will not engage in picketing or any other activity at the Convention Center jobsite which would contravene Article 12 in the PLA. Picketing at other jobsites will comply with the National Labor Relations Board requirements regarding common situs picketing.

If you have any questions, or would like further information, please do not hesitate to contact me.

Sincerely,

Jim S. Cahill
President

Tst. Exh. 5

Exhibit H

Exhibit H

August 11, 2010

VIA HAND DELIVERY

Jeff Davidson
Spurlino Materials of Indianapolis
2605 Kentucky Avenue
Indianapolis, IN 46221

In re: Teamsters Local 716 and Spurlino Materials

On behalf of Teamsters Union Local No. 716, I am writing to notify you that the Union and the employees it represents are prepared to end their unfair labor practice strike against Spurlino Materials. Local 716 is therefore making an unconditional offer to return to work on behalf of the employees it represents, effective August 12, 2010. We demand that the employees be immediately recalled to work. Please contact the undersigned to discuss when the employees should report to work.

Please note that in making this unconditional offer to return to work, the Union is not waiving its contention that Spurlino Materials has committed unfair labor practices in connection with its discharge of Gary Stevenson.

Sincerely,

Jim S. Cahill
President

Jnt. Exh. 6

Exhibit I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

Written Opinion
Under the E-Government Act and Judicial Conference policy

COAL, ICE, BUILDING MATERIAL AND SUPPLY DRIVERS, HEAVY HAULERS, WAREHOUSEMEN, AND HELPERS LOCAL UNION NO. 716, AN AFFILIATE OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,	)	
Petitioner,	)	CASE NO. 1:07-cv-0280-DFH-JMS
v.	)	
SPURLINO MATERIALS OF INDIANAPOLIS, LLC,	)	
Defendant.	)	

ENTRY ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Plaintiff Coal, Ice, Building Material and Supply Drivers, Riggers, Heavy Haulers, Warehousemen & Helpers, Local 716 filed this action to compel defendant Spurlino Materials of Indianapolis, LLC, to arbitrate a grievance over the suspension and firing of a Spurlino Materials employee, Mark Sims. The parties have filed cross-motions for summary judgment. As explained below, the court grants Local 716's motion, denies Spurlino Materials' motion, and orders arbitration of the grievance. Spurlino Materials' arguments weave together the merits of its reasons for suspending and firing Sims with its arguments against arbitration. The broad arbitration clause in the Project Labor Agreement leaves

those issues about both the merits and the scope of the agreement to the arbitrator.

Summary Judgment Standard

Motions for summary judgment should be granted "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). In applying this standard, the court views the evidence and all reasonable inferences in the light most favorable to the non-moving party. *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). A motion should be granted as long as no rational fact finder could return a verdict in favor of the non-moving party. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A court must view all facts and draw all legitimate inferences in the light most favorable to the non-moving party. See Fed. R. Civ. P. 56(c); *Anderson*, 477 U.S. at 255; *NLFC, Inc. v. Devcom Mid-America, Inc.*, 45 F.3d 231, 234 (7th Cir. 1995). That both sides have filed motions for summary judgment does not alter the applicable standard; the court must consider each motion independently and must deny both motions if there is a genuine issue of material fact. *E.g.*, *Heublein, Inc. v. United States*, 996 F.2d 1455, 1461 (2d Cir. 1993); *Harms v. Laboratory Corp. of America*, 155 F. Supp. 2d 891, 905-06 (N.D. Ill. 2001). In considering cross-motions for summary judgment, the court must give each party the benefit of all conflicts in the evidence and the

benefit of all reasonable inferences that might be drawn from the evidence in its favor when in the role of non-moving party.

In cases involving collective bargaining agreements, issues of arbitrability are often subject to summary judgment. See, *e.g.*, *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Int'l Union v. TriMas Corp.*, — F.3d —, 2008 WL 2609253, No. 07-1688 (7th Cir. July 3, 2008) (affirming summary judgment ordering arbitration); *Beer, Soft Drink, Water, Fruit Juice, Local Union No. 744 v. Metropolitan Distributors, Inc.*, 763 F.2d 300, 302 (7th Cir. 1985) (same).

Undisputed Material Facts

Defendant Spurlino Materials is in the ready-mix concrete business. In the Indianapolis area, it operates a facility on Kentucky Avenue, one in Noblesville, and one in Linden. Its trucks and drivers deliver ready-mix concrete to construction sites throughout the Indianapolis area.

In January 2006, plaintiff Local 716 won an organizing election for Spurlino Materials drivers and batchmen. Local 716 and Spurlino Materials have not yet reached agreement on the terms of a collective bargaining agreement specific to Spurlino Materials.

Nevertheless, Spurlino Materials agreed to comply with an agreement to which Local 716 is a party, and which provides for arbitration of a wide range of disputes. Spurlino Materials was a successful bidder for some of the concrete work on the new professional football stadium construction project in downtown Indianapolis (scheduled for completion later this summer). The stadium project was covered by a project labor agreement ("PLA"), which covered a host of employers and trade unions setting forth terms for work to be done on the stadium project. As a condition of working on the stadium project, in February 2006, Spurlino Materials agreed to be bound by the PLA. Green Aff. ¶ 3.

When Spurlino Materials was working on the stadium project, it paid its drivers a higher hourly wage for their work on concrete deliveries to the stadium. As relevant here, the record here indicates that the higher wage rate applied from the time a driver left the Spurlino Materials facility on Kentucky Avenue until the driver returned to that facility. For any week in which a Spurlino Materials driver made even one delivery to the stadium project, Spurlino Materials also paid full weekly pension and benefits contributions for that driver to multi-employer pension and benefit plans.

Spurlino Materials employed Mark Sims as a driver for its ready-mix concrete trucks in 2006. Sims worked on the stadium project and many other jobs for Spurlino Materials. He was a member of the bargaining unit at Spurlino Materials, though as noted, there was no collective bargaining agreement in place

that was specific to Spurlino Materials. For his time on the stadium project, Spurlino Materials paid Sims the higher hourly wages. Sims was paid the lower standard Spurlino Materials wage for his other hours. For weeks in which Sims did any work on the stadium project, Spurlino Materials made the required pension and benefit contributions under the PLA.

On August 4, 2006, Sims made a delivery of concrete to a regular customer and then returned to the Kentucky Avenue facility. He asked the company dispatcher if he could go home early. He was told he could not leave because he was needed for more work. Sims responded with comments that the company has treated as a threat to drive his concrete truck into a company building.[1]

The dispatcher did nothing immediately. A little more than an hour later, after Sims had calmed down, the dispatcher loaded Sims' truck for a delivery to the stadium project. Sims left to make the delivery to the stadium project. The

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[1]Sims asked the dispatcher if he needed volunteers to go home and was told "not yet." According to an undisputed transcript of the recorded conversation, Sims responded:

> No not yet, check this out man and you can pass this on, after looking at my check and seeing they are still dicking me out of my money man, I feel real faint and I'm not saying that to get out of work. I'm telling you this because I'm tired man I'm real tired and you can ask any driver they will let you know how tired I am, and I don't know how good I am going to drive this truck cause driving it thru this building sounds real good about now man. I'm tired of working dude and they tell ya I get checks with zero. I make no f***ing money work 60 hours. I'm really f***ing stressed this minute right this f***ing minute.

Rollings Aff., Ex. A.

dispatcher then reported to management that Sims was "on a rampage" and had threatened to drive his truck into a building. Spurlino Materials manager Gary Matney decided to send Sims home immediately upon his return from the stadium project, and he suspended Sims the next day. Matney Aff. ¶¶10, 12. Management also filed a complaint with the police, though there was no further police action. Sims never worked for Spurlino Materials again.

Local 716 was under the impression that Sims had been fired, and it filed a grievance on August 11, 2006. Spurlino Materials responded by saying that Sims had only been suspended pending an investigation. Four months later, in December 2006, Spurlino Materials informed Local 716 that it had decided to fire Sims. Local 716 filed a new grievance on December 12, 2006, invoking the grievance and arbitration provisions of the PLA. Spurlino Materials responded by saying that the PLA and its grievance and arbitration provisions did not apply to Sims' termination based on his conduct at the Kentucky Avenue facility, and that no grievance procedure applied to the matter.

The PLA included a provision that employees may be fired for cause. PLA § 6.2 (Compl. Ex. A). The PLA also provided: "Each Employer shall have the right to terminate any employee who fails to satisfactorily, competently, and diligently perform his/her assigned work; however, such termination is subject to the grievance procedure of the applicable collective bargaining agreement listed in

Attachment C." PLA § 6.5. The applicable collective bargaining agreement listed for Local 716 provided for grievances of employee terminations.

The PLA included provisions concerning its scope. One stated: "This Agreement shall apply only to Employers who perform Construction Work on the Project during the term of this Agreement at the Project Site." PLA § 2.1.[2] The PLA also provided:

> Subject to the provisions of this Article 2, it is agreed that each Employer, before performing any Construction Work on the Project, shall become signatory to and be bound by the terms and conditions of this Agreement as applicable to the work to be performed by such Employer by signing a Letter of Assent and filing it with the Council, the ISCBA and CM.

PLA § 2.4. The PLA provided:

> The Parties agree and recognize that each Employer's recognition of the appropriate signatory Union(s) is only for Construction Work on the Project, and as further limited in Article 2 of this Agreement. The signatory Unions agree and acknowledge that the Employers bound to recognize a signatory Union solely by this Agreement are not obligated to recognize signatory Unions at any other construction project, at any other location, or for any other reason.

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[2]In its briefs, Spurlino Materials edited this sentence in a way that makes it appear narrower. Spurlino Materials wrote: "The Project Labor Agreement plainly limits the scope of its applicability to construction work performed '*on the Project* during the term of this Agreement *at the Project Site.*'" Def. Br. 7 (emphasis added by defendant); Def. Reply Br. 5 (same). By deleting the subject, verb, and direct object of the sentence, that editing removes the point that the PLA applied to employers who performed work on the project, without limiting in that particular sentence the scope of its application to those employers.

PLA § 3.3. Each employer was required to sign a letter of assent in which it agreed "to comply with all of the applicable terms and conditions of [the PLA] as it relates to such Employer's portion of the work with respect to the Project (as those terms are defined therein)." PLA, Att. A. The construction agreement between Local 716 and Associated General Contractors of Indiana, Inc. recognized that an employee could perform some of his work under the agreement and some outside the scope of the agreement. See Def. Ex. 2 at 12 (requiring pension contributions for each week, on each regular employee, "even though such employees may work only part-time under the provisions of this Agreement").

The PLA included a very broad arbitration clause that covered both Local 716 and Spurlino Materials: "Any dispute concerning the application, interpretation, or an alleged violation of this Agreement shall be considered a grievance subject to resolution under the following procedures, except that jurisdictional disputes shall be resolved according to the provisions of Article 15. . . ." PLA § 14.3. (There followed a two-step process for a grievance followed by binding arbitration.) No language in the PLA specifically excluded arbitration of any category of disputes that would include the Sims firing. As noted, Section 6.5 provided that disputes over employee terminations were subject to grievance and arbitration.

Spurlino Materials initially refused to pay its employees the wages and benefits called for by the PLA for their work on the stadium project. On

February 19, 2006, Local 716 filed a grievance on this point. That grievance was settled by Spurlino Materials' agreement (short of arbitration) to pay the PLA wage and benefit rates both retroactively and prospectively.

Local 716 has offered as undisputed material facts a number of matters related to its long-term dispute with Spurlino Materials, including unfair labor practice charges, administrative proceedings before the National Labor Relations Board, and this court's issuance of an injunction under section 10(j) of the National Labor Relations Act, 29 U.S.C. § 160(j). See *Lineback v. Spurlino Materials, LLC*, 2007 WL 3334786 (S.D. Ind. Nov. 8, 2007), appeal pending, No. 07-3925. Those matters might provide interesting background for a reader interested in the parties' motives and the investments in this particular dispute, but these matters are not relevant to the narrow legal question now before the court, which is whether Local 716 is entitled to compel arbitration of its grievance over the suspension and firing of Sims.

Discussion

Arbitration is a matter of contract. A party cannot be required to submit to arbitration any dispute that it has not agreed so to submit. *International Brotherhood of Electrical Workers, Local 21 v. Illinois Bell Telephone Co.*, 491 F.3d 685, 687 (7th Cir. 2007), quoting *AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643, 648 (1986). But where a contract includes an arbitration clause, there is a presumption of arbitrability in the sense that "'[a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.' Doubts should be resolved in favor of coverage." *AT&T Technologies*, 475 U.S. at 650, quoting *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-83 (1960). Thus, when a labor agreement contains an arbitration clause, there is a presumption of arbitrability that may be overcome only with "forceful evidence" of an intent to exclude the claim. *International Union of Operating Engineers, Local Union 103 v. Indiana Construction Corp.*, 13 F.3d 253, 256 (7th Cir. 1994), quoting *Oil, Chemical and Atomic Workers International Union v. Amoco Oil Co.*, 883 F.3d 581, 587 (7th Cir. 1989), quoting in turn *Warrior & Gulf*, 363 U.S. at 585.

In deciding an issue of arbitrability, a court must take care to avoid deciding the merits of the underlying claim. *IBEW Local 21*, 491 F.3d at 688, citing *AT&T Technologies*, 475 U.S. at 650. Even disputes involving the scope and validity of

an arbitration agreement are ordinarily matters for the arbitrator to decide. *Id.* (affirming order compelling arbitration where union made good faith allegation that recognition clause had been violated); *Air Line Pilots Ass'n, Int'l v. Midwest Express Airlines, Inc.*, 279 F.3d 553, 555-56 (7th Cir. 2002) (reversing denial of arbitration where arbitrability and merits of grievance were intertwined).

As applied to this case, these principles mean that Local 716's grievance of Sims' firing is arbitrable under the broad arbitration clause of the PLA. Spurlino Materials may argue to the arbitrator that the circumstances of and reasons for Sims' firing take his case outside the scope of the PLA, but an arbitrator must make the decision about the merits of those arguments.

The language of the PLA does not defeat Local 716's demand for arbitration. The arbitration clause in Section 14.3 is very broad, applying to "Any dispute concerning the application, interpretation, or an alleged violation of this Agreement." That describes this dispute to a T. The parties' briefs in this court show that there is room for reasonable argument about the scope of the PLA as applied to Sims' case. Section 2.1 of the PLA provided that the agreement applied to employers who performed construction work on the stadium project, and not merely to construction work on the stadium project, as Spurlino Materials' edited quotation would indicate. Employee terminations are clearly arbitrable under the PLA, and the PLA covered at least some of Sims' work. See § 6.5. It is not frivolous to suggest that the PLA's protections against arbitrary firing would not

be worth much if the employer could trump up reasons to fire an employee for conduct not directly related to work on the stadium project itself. At the same time, Spurlino Materials points out correctly that the PLA did not apply to every aspect of a participating employer's business, but the provisions cited by Spurlino Materials simply do not provide a clear answer to the Sims case. They certainly do not amount to "forceful evidence" that the Sims' matter is so far beyond the scope of the broad arbitration provision that the matter does not present an issue concerning the application or interpretation of the PLA or of an alleged violation of the PLA.

Spurlino Materials argues that Sims' firing is beyond the reach of the PLA because it fired Sims for conduct that had nothing to do with the PLA and based on conduct beyond the scope of Sims' work on the stadium project that was covered by the PLA. Spurlino Materials argues that Sims was fired for conduct away from the stadium project and before Sims was assigned to take his next load to the stadium.

That argument shows how the scope of the PLA and the merits of the Sims grievance are intertwined. After all, the grievance certainly asserts on its face a violation of the PLA, and the grievance certainly presents a dispute concerning the application or interpretation of the PLA and an alleged violation of the PLA. That description of the Sims grievance fits squarely within the scope of the arbitration clause even if Spurlino Materials ultimately persuades an arbitrator that the Sims

grievance is without merit and/or was based on conduct beyond the scope of the PLA.

Even under the company's version of the facts, moreover, one might infer that Sims was fired for his reaction to being told he needed to remain available for work, which turned out to be work on the stadium project. That was his next load, after all, so that the union can argue that Sims was preparing to do work on the stadium project, or at least was being held at work so that he was available to work on the stadium project, at the time of the incident the company relies upon to justify his firing. Spurlino Materials suspended Sims immediately upon his return from a delivery to the stadium project. Matney Aff. ¶¶ 10, 12. And Local 716 points out that when an employee is terminated for conduct even entirely away from the workplace, such terminations can be arbitrable. Pl. Reply 6, citing *Paper, Allied, Chemical and Energy Workers Int'l Union, Local 5-508 v. Slurry Explosive Corp.*, 107 F. Supp. 2d 1311 (D. Kan. 2000); Bethel, *Negligent Retention and Arbitration: The Effect of a Developing Tort on Traditional Labor Law*, 2000 J. Disp. Resol. 215, 222 (2000) (parties commonly commit issues of off-duty misconduct to arbitration); Kearney, *Arbitral Practice and Purpose in Employee Off-Duty Misconduct Cases*, 69 Notre Dame L. Rev. 135 (1993).

The comparison to off-duty misconduct is far from perfect, of course, since Sims was actually on duty with Spurlino Materials at the time of the conversation that was interpreted as a threat. The critical point for the present is that the court

could not accept Spurlino Materials' arguments without making a decision about the true reasons for its decisions to fire Sims, a matter that goes right to the heart of the merits of the underlying dispute and whether Sims' comments were sufficient to justify termination. Those factual disputes would also prevent summary judgment for either side, so that the court would, under Spurlino Materials' theories, need to have a trial about the reasons for the firing to decide whether the firing is arbitrable.

To accept Spurlino Materials' arguments, the court would also need to determine much more precisely the scope of the PLA in a case where its language offers both sides reasonable grounds for argument as to whether it might apply to an employer's termination of an employee who had worked on the stadium project and who was expected to work more on the stadium project, particularly where the employer relies on an incident that occurred between specific jobs and while the employer had directed the employee to remain available to work so that he could do more work on the stadium project that day, and where the employer suspended the employee immediately upon his return from a stadium project job. The PLA does not sharply define when an employee is covered by the PLA and when he is not, and for what purposes.

The better approach here, and the one directed by the principles set forth in *AT&T Technologies, IBEW Local 21*, and *Air Line Pilots Association*, to name just a few cases, is to let Spurlino Materials make those arguments to the arbitrator.

The arbitration clause exists and is broad, and clearly applies to at least some employee terminations. Spurlino Materials has not shown "forceful evidence" putting this dispute beyond the scope of the arbitration clause. The arbitrator may consider whether there is a sufficient link between Sims' firing and the stadium project and the PLA to support arbitration. This is so because the arbitration clause in the PLA is so broad, covering "Any dispute concerning the application, interpretation, or an alleged violation of this Agreement." See *IBEW Local 21*, 491 F.3d at 688 (collecting cases and affirming order of arbitration under an arbitration clause not as broad as the PLA in this case).[3] A party cannot avoid arbitration by arguing that the grievance simply lacks merit; that is an issue for the arbitrator. In other words, the parties agreed to let an arbitrator decide whether the PLA applies to a particular dispute and, if so, how the PLA should be interpreted to apply to it.

Accordingly, the court grants Local 716's motion for summary judgment and denies Spurlino Materials' motion for summary judgment. The court will enter a final judgment ordering arbitration of the union's grievance of Mark Sims' termination.

So ordered.

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[3]The arbitration clause in the stadium project PLA is considerably broader than the clause at issue in *IBEW Local 21*, which included some limiting language that divided the appellate panel. See 491 F.3d at 693-94 (Sykes, J., dissenting).

Date: July 10, 2008

DAVID F. HAMILTON, CHIEF JUDGE
United States District Court
Southern District of Indiana

Copies to:

Robert J. Brown
THOMPSON HINE LLP
bob.brown@thompsonhine.com

Neil E. Gath
FILLENWARTH DENNERLINE GROTH & TOWE LLP
ngath@fdgtlaborlaw.com